

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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JACOB GESTETNER,

Plaintiff,

-against-

EQUIFAX INFORMATION SERVICES LLC,

Defendant.  
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No. 18 Civ. 5665 (JFK)  
**OPINION & ORDER**

APPEARANCES

FOR PLAINTIFF JACOB GESTETNER  
Edward B. Geller  
EDWARD B. GELLER, ESQ., P.C.

FOR DEFENDANT EQUIFAX INFORMATION SERVICES LLC  
Jonathan Daniel Klein  
CLARK HILL PLC

**JOHN F. KEENAN, United States District Judge:**

Before the Court is a letter from Plaintiff Jacob Gestetner ("Gestetner") which the Court interprets as a motion for leave to amend his complaint. For the reasons below, Plaintiff's motion is denied.

**I. Background**

**A. Factual Background**

The Court assumes familiarity with the facts of this case as stated in its Opinion and Order of March 13, 2019 (the "March 13 Order"). See Gestetner v. Equifax, No. 18 Civ. 5665, 2019 WL 1172283 (S.D.N.Y. Mar. 13, 2019). To briefly summarize, Plaintiff alleges that Defendant Equifax Information Services

LLC ("Defendant") violated Sections 1681e(b) and 1681i of Fair Credit Reporting Act ("FCRA") (15 U.S.C. §§ 1681e(b) & 1681i) by including inaccurate information on his Equifax Credit Report.

### **B. Procedural Background**

On February 26, 2017, Plaintiff filed his complaint before the Supreme Court of the State of New York.

On June 21, 2018, Defendant had this case removed to this Court pursuant to 15 U.S.C. § 1681, which gives federal courts original jurisdiction over FCRA claims.

On March 13, 2019, the Court granted Defendant's motion to dismiss, pursuant to Rule 12(b)(6), but gave Plaintiff 30 days to file a motion for leave to amend his complaint by demonstrating (1) how Plaintiff would cure the deficiencies in his claim by filing a proposed amended complaint and (2) that justice requires granting leave to amend.

On April 12, 2019, Plaintiff filed the instant motion for leave to amend his complaint.

### **II. Legal Standard**

Leave to amend should be freely granted when justice so requires. Fed. R. Civ. P. 15(a)(2). "Nonetheless, the Court may deny leave if the amendment (1) has been delayed unduly, (2) is sought for dilatory purposes or is made in bad faith, (3) the opposing party would be prejudiced, or (4) would be futile." Lee v. Regal Cruises, Ltd., 916 F. Supp. 300, 303 (S.D.N.Y. 1996)

(citing Foman v. Davis, 371 U.S. 178, 182 (1962)). "An amendment to a pleading is futile if the proposed claim could not withstand a motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6)." Lucente v. Int'l Bus. Machs. Corp., 310 F.3d 243, 258 (2d Cir. 2002) (citing Dougherty v. North Hempstead Bd. of Zoning Appeals, 282 F.3d 83, 88 (2d Cir. 2002)). "Thus, the standard for denying leave to amend based on futility is the same as the standard for granting a motion to dismiss." IBEW Local Union No. 58 Pension Trust Fund & Annuity Fund v. Royal Bank of Scotland Grp., PLC, 783 F.3d 383, 389 (2d Cir. 2015).

### **III. Discussion**

To adequately state a claim under either section 1681e(b) or 1681i, a plaintiff must adequately allege that the defendant reported "inaccurate" information. Jones v. Experian Info. Solutions, Inc., 982 F. Supp. 2d 268, 272-73 (S.D.N.Y. 2013) (quoting Fashakin v. Nextel Commc'ns., No. 05-CV-3080 (RRM), 2009 WL 790350, at \* 11 (E.D.N.Y. Mar. 25, 2009)) (§ 1681i); Adams v. Nat'l Eng'g Serv. Corp., 620 F. Supp. 2d 319, 330 (D. Conn. 2009) (citing Gorman v. Experian Info. Solutions, Inc., No. 07 CV 1846 (RPP), 2008 WL 4934047, at \*4 (S.D.N.Y. Nov. 19, 2008)) (§ 1681e(b)).

In the March 13 Order, the Court dismissed Plaintiff's complaint as it lacked (1) any factual allegations explaining why having three delinquency dates listed in Plaintiff's M & T

Account necessarily made the first two false and (2) "any explanation as to why listing a new late date after an account's closing date necessarily makes that date 'misleading or incorrect.'" Gestetner, 2019 WL 1172283 at 6. Without such factual enhancement, the Court held that Plaintiff had failed adequately plead the "inaccurate information" element of both claims and dismissed them. Id. (citing Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009)).

The Court has reviewed Plaintiff's proposed amended complaint and found its factual allegations identical with the exception of three paragraphs reproduced here in their entirety:

15. The M & T account, reported by Defendant, listed multiple delinquency dates which conflicted with each other and create a misleading record of Plaintiff's account.
16. The listing of these conflicting dates by Defendant causes confusion and uncertainty for anyone reviewing Plaintiff's credit report.
17. As a result of Defendant's inaccurate and deceptive reporting, Plaintiff's credit score dropped dramatically and damaged his credit profile.

These new factual allegations evidently fail to explain why (1) having three delinquency dates listed in Plaintiff's M & T Account necessarily made the first two false, or (2) listing a new late date after an account's closing date necessarily makes that date "misleading or incorrect." Plaintiff has, thus,

failed to address the inadequacies that the Court identified in his original complaint. Accordingly, the Court holds that Plaintiff's proposed complaint would fail to survive a Rule 12(b)(6) motion and, thus, that amendment be futile. IBEW Local Union No. 58, 783 F.3d at 389.

**Conclusion**

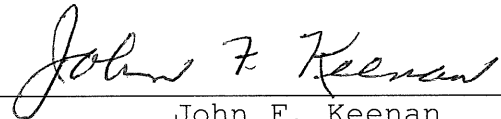
For the reasons stated above, Plaintiff's motion for leave to file an amended complaint is DENIED and all claims are dismissed with prejudice. The Clerk of Court is respectfully directed to close this case.

**SO ORDERED.**

Dated: New York, New York

~~May~~ 3, 2019

*June*



John F. Keenan

United States District Judge